

DRAFT**AGREEMENT BETWEEN CITY OF SUNNYVALE AND SUSTAINABLE
COMMUNITY GARDENS FOR THE DEVELOPMENT, OPERATION AND
MAINTENANCE OF COMMUNITY GARDENS**

THIS AGREEMENT dated January 1, 2006 is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and SUSTAINABLE COMMUNITY GARDENS ("GROUP"), a non profit corporation.

WHEREAS the City desires to support independent organizations providing services beneficial to the Community; and

WHEREAS GROUP wishes to provide non-profit community gardening services which are not otherwise offered to City residents or duplicated by the City of Sunnyvale; and

WHEREAS GROUP wishes to use **(location TBD)** for that purpose at limited cost to GROUP;

WHEREAS CITY's General Plan calls for the City to "provide, develop and maintain special use parks and facilities"; to "provide for a balance between general recreation uses and special interest uses in parks and facilities"; to "provide recreation facilities that will accommodate and meet the needs and interests of special population groups"; to "provide programming which meets the needs of families and changing family structures"; to "leverage available resources by pursuing co-funded and/or cooperative agreements for both expansion and maintenance of programs, facilities, and services in order to maximize benefits to the community"; to "foster and encourage partnerships with outside groups in order to address the community's diverse recreational needs"; and to "encourage active citizen involvement in development and provision of Parks and Recreation programs, facilities, and services"

NOW THEREFORE, in accordance with The City's "Relationships with Outside Groups Policy", the CITY OF SUNNYVALE and GROUP enter into this agreement.

1. Obligations of CITY

CITY shall provide GROUP exclusive use of **(location TBD)** for the purpose of community gardening. "Community Gardening" shall be defined as:

The group activity of growing and harvesting legal plants and produce, using organic gardening practices, at various location(s) in Sunnyvale intending to provide opportunities for: learning about various aspects of the natural world including organic food production and research; sharing a love of growing plants and caring for the environment; beautifying the community; meeting socially and

sharing common gardening interests; teaching students through hands-on gardening activities and workshops; and, providing gardening plots for residents who may not have space to garden on their personal property or knowledge of organic gardening practices.

CITY shall provide GROUP free use of space in a park building for meetings and educational purposes related to community gardening once monthly for a period not to exceed four hours per use. The location of said meetings shall be at the sole discretion of the CITY, subject to availability. GROUP may reserve said use up to six months in advance.

CITY shall provide a referral to GROUP in the Department of Parks and Recreation Activity Guide under the heading of "Special Interest".

CITY shall hold, disperse, and account for monies granted to the CITY by the Satterberg Foundation for the purpose of developing community gardens in Sunnyvale in accordance with accepted City financial practices and procedures.

CITY shall review and approve design and construction plans for community gardens prior to construction.

CITY shall review and approve any and all user fees to be paid by gardeners to GROUP.

CITY shall review and approve all by-laws, policy manuals, rules, regulations, processes and procedures GROUP uses in connection with assignment of garden plots, operation and maintenance of the Community Gardens.

CITY shall pay all water and electric bills associated with use of utilities by GROUP for community gardening at **(location TBD)**

2. Obligations of GROUP

GROUP shall be responsible for all aspects of designing, building, operating and maintaining the community gardens located at **(location TBD)**

GROUP shall compensate CITY for irrigation costs by either:

- a) Paying CITY \$2,200 annually, which shall be due in equal installments of \$183.33 per month commencing with the first day of the first full month following the completion of the Community Gardens construction. This amount is due each year for exclusive use of **(location TBD)**. The monthly amount will be adjusted each year by the CITY, not to exceed the percentage change of the *(cost of water as approved by City Council)*. The new monthly amount will be in effect beginning on the first month following the GROUP's notification of the CITY approved fee increase. Or;

b) Providing a metered connection for water and paying the irrigation water costs directly to the City of Sunnyvale, Utilities Division.

GROUP shall not demolish any structure, grade facilities, or construct any amenity without first having obtained the approval of CITY, shall be required to apply for all appropriate permits and shall be responsible for paying all related fees.

GROUP shall maintain the approved location for the express purpose of Community Gardens.

GROUP shall assign approximately 25% of gardening plots for primary use by the Sunnyvale Senior Center Gardeners. For the purpose of this Agreement, Sunnyvale Senior Center Gardeners are those gardeners that are members of the Sunnyvale Senior Center and residents of the Sunnyvale. Non-resident Sunnyvale Senior Center members may assist primary gardeners but may not have a garden plot assigned for their primary use. In any case, a minimum of fifteen, (15) garden plots approximately 64 square feet in size each shall be reserved for the Sunnyvale Senior Center Gardeners.

Group shall assign approximately 75% of the gardening plots for primary use by Sunnyvale resident gardeners. Non-resident gardeners may assist resident gardeners but may not have a plot assigned to their primary use. At a minimum, forty garden plots approximately 64 square feet in size each, shall be reserved for use by resident gardeners.

GROUP shall not perform community gardening services for profit. However, this does not preclude the establishment of user fees to pay for costs incurred or anticipated by GROUP in association with operation and maintenance of the community gardens. Any fees charged for this purpose are subject to review and approval by the Director of Parks and Recreation.

GROUP shall inform all gardeners yearly, through special notice included in all Garden Plot Assignment Agreements, that the term of this Community Gardens Agreement is five (5) years and shall specify the termination date of this Community Gardens Agreement as approved by City Council.

GROUP shall provide City one copy of all by-laws, policy manuals, rules, regulations, processes and procedures it uses in connection with assignment of garden plots, operation and maintenance of the Community Gardens as approved by the Director of Parks and Recreation of the CITY.

GROUP shall assign primary responsibility for community garden plots to Sunnyvale residents only. Those living outside of Sunnyvale may assist resident gardeners but may not be assigned a garden plot.

GROUP shall recruit gardeners from among Sunnyvale residents whenever garden plots are available and no waiting list exists. Should Sunnyvale Senior Center Gardener's garden plot(s) become available, and no Sunnyvale Senior Center Gardener is on the waiting list to become a primary gardener, the plot(s) shall remain unused until a Sunnyvale Senior Center Gardener signs up for a garden plot assignment.

GROUP shall provide CITY two (2) keys to the gate of any fenced portion(s) of the Community Garden facility.

GROUP shall report participant numbers to CITY yearly on June 30 to include the number of garden plots in use, residents (including neighborhood of residence), non-residents, youths, seniors, low income and total number of gardeners and students, as well as the number of hours of educational instruction provided during the previous fiscal year.

GROUP shall provide the following services at no cost to the City:

- Provide garden plots in accordance with all associated plot assignment rules as approved by the Director of Parks and Recreation of CITY.
- Provide garden plots to Low Income Sunnyvale Residents in accordance with all associated plot assignment rules as approved by the Director of Parks and Recreation of CITY. Low Income residents will not have any higher priority in obtaining garden plots, but shall follow all approved plot assignment and distribution rules. For this purpose, "Low Income" shall be determined by using the income guidelines and definition of low income established by the Community Development Block Grant program (CDGB).
- Provide and teach organic gardening principles classes to ensure that each gardener that participates in gardening at the Community Gardens is knowledgeable of such practices.

GROUP shall resolve concerns and complaints in accordance with methods and/or policies as approved by the Director of Parks and Recreation of CITY.

GROUP shall remove any instructor or gardener that the CITY determines is not satisfactory for whatever reason.

GROUP shall access, spend, and account for monies granted by the Satterberg Foundation for the purpose of developing community gardens in Sunnyvale and establish a system of financial practices and procedures as approved by the CITY, Director of Finance.

3. Conflicts of Interest

No officer or employee of CITY shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof. During the term of this Agreement GROUP shall not accept employment or an obligation which is inconsistent or incompatible with GROUP'S obligations under this Agreement.

4. Compliance with Laws

GROUP shall not discriminate against any gardener, visitor, employee or applicant for employment because of race, religion, creed, color, gender, age (persons 40 years of age or older), disability, national origin, or any other basis to the extent prohibited by federal, state or local law.

GROUP shall comply with all federal, state, county and city laws, statutes, ordinances, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting performance of the Agreement including, but not limited to, not growing any plant materials that are illegal to grow under state or federal law. In particular, the growing of *Cannabis sativa* (marijuana) is prohibited whether or not such activity may be lawful for medical purposes under relevant laws of the state of California. CITY shall have the right to enter, remove and confiscate plants of illegal species, including *Cannabis sativa*, without notice, and shall not be liable to the owner of such plants for any loss or damage sustained thereby.

5. Indemnity

GROUP agrees to indemnify and hold harmless CITY, its officers, agents, employees and volunteers from any and all claims, demands, actions, causes of action, losses, damages, liabilities, known or unknown, and all costs and expenses, including reasonable attorneys' fees in connection with any injury or damage to persons or property arising out of or in any way connected with the act, omission or negligence of GROUP, its members, officers, employees, agents, GROUP, subgroups or any officer, agent or employee thereof in relation to GROUP'S performance under this Agreement.

6. Insurance

GROUP shall and will, at own cost, take out and maintain without interruption during the life of this Agreement in such form and with a company or companies satisfactory to the CITY policies of the following types of insurance:

- (a) Comprehensive General Liability Policy, affording coverage for bodily and personal injury liability, including liability for death, and property damage, or a combination thereof, in an amount not less than One Million

Dollars (\$1,000,000) Claims Single Limit (CSL). Coverage shall be on an "occurrence" basis and not a "claims made" basis; provided, however, as follows:

- (1) CITY, its Officers, agents, employees, and volunteers shall be named as an additional insured in all insurance policies;
 - (2) A contractual liability endorsement shall be included in each insurance policy, extending coverage to include liability assumed under paragraph 5 above; and,
- (b) Worker's compensation insurance and employer's liability insurance for all employees of GROUP.
- (c) Certificates of proof of Insurance for above required policies shall be supplied each January and upon renewal, by agency that provides GROUP insurance(s) for Community Garden purposes.

7. CITY OF SUNNYVALE Representative

The Director for Parks and Recreation of CITY or such other person as may be designated by the Director shall represent CITY as the City Manager's authorized representative in all matters pertaining to the services to be rendered under this Agreement. All requirements of CITY pertaining to the services and materials to be rendered under this Agreement shall be coordinated through the CITY representative.

8. GROUP Representative

The President shall represent SUSTAINABLE COMMUNITY GARDENS in all matters pertaining to the services and materials to be rendered under this Agreement; all requirements of GROUP pertaining to the services or materials to be rendered under this Agreement shall be coordinated through the GROUP representative.

9. Notices

All notices required by this Agreement shall be in writing, and shall be personally delivered, sent by first class mail with postage prepaid, or by commercial courier, addressed as follows:

To CITY: City Manager
 CITY OF SUNNYVALE
 P. O. Box 3707
 Sunnyvale, CA 94088-3707
 (408) 730-7480

To GROUP: Josh Salans, President
Sustainable Community Gardens
752 South Mary Avenue
Sunnyvale, CA 94087
(408) 735-8166

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by telephone e-mail or facsimile transmission, to accomplish timely communication. However, to constitute effective notice, written confirmation of a telephone conversation or an original of a facsimile transmission or an e-mail must be sent by first class mail, by commercial carrier, or hand- delivered. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of three days after mailing, unless such date is a date on which there is no mail service. In that event communication is deemed to occur on the next mail service day.

10. Assignment

Neither party shall assign or sublet any portion of this Agreement without the prior written consent of the other party.

11. Duration of Agreement

This Agreement shall continue from the date of execution for a period of five (5) years, unless otherwise terminated in accordance with section 12 below.

12. Termination

(a) If GROUP defaults in the performance of this Agreement, or materially breaches any of its provisions; CITY at its option may terminate this Agreement by giving written notice to GROUP.

(b) Without limitation to such rights or remedies as CITY shall otherwise have by law, either party shall have the right to terminate this Agreement for any reason upon one hundred eighty (180) days' written notice to the other party. If CITY terminates the Agreement; CITY shall endeavor to allow planted crop to mature to fruition allowing GROUP to harvest produce prior to termination of Agreement. If time is of the essence and harvest is not possible due to needs of CITY, CITY shall reimburse GROUP for expenses directly related to tree replacement and pre-harvest expenses for the year of termination where the termination occurs before the commencement of the harvest. As a condition to such reimbursement of expenses, GROUP shall furnish to CITY annually a financial audit of operations under this Agreement.

13. Entire Agreement; Amendment

This writing constitutes the entire agreement between the parties relating to the services to be performed or materials to be furnished hereunder. No modification of this Agreement shall be effective unless and until such modification is evidenced by writing signed by all parties.

14. Miscellaneous

Time shall be of the essence in this Agreement. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision. This Agreement shall be governed and construed in accordance with the laws the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST:

CITY OF SUNNYVALE ("CITY")

City Clerk

By _____
City Manager Date

APPROVED AS TO FORM:

GROUP

City Attorney

By _____
Josh Salans
President, GROUP Date